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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 TERRY LEE CALLANDRET,

11 Plaintiff,

12 v.

13 DEPARTMENT OF CORRECTIONS
14 HEADQUARTERS CLASSIFICATION
TEAM,

15 Defendant.

CASE NO. 3:19-CV-05271-BHS-DWC

ORDER TO FILE AMENDED
COMPLAINT

16 Plaintiff Terry Lee Callandret, proceeding *pro se* and *in forma pauperis*, filed this civil
17 rights complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint
18 under 28 U.S.C. § 1915A, the Court finds Plaintiff has failed to state a claim, but provides
19 Plaintiff leave to file an amended pleading by May 17, 2019, to cure the deficiencies identified
20 herein.

21 **I. Background**

22 In the Complaint, Plaintiff alleges Defendant Department of Corrections Headquarters
23 Classification Team ("Classification Team") violated Plaintiff's constitutional rights by failing to
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1 protect him. Dkt. 5. Specifically, Plaintiff states he was attacked at the Washington State
2 Penitentiary (“WSP”). *Id.* After the attack, the Classification Team transferred Plaintiff to
3 Clallam Bay Corrections Center (“CBCC”) where Plaintiff was housed with members of the
4 same group that attacked him. *Id.*

5 **II. Discussion**

6 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
7 complaints brought by prisoners seeking relief against a governmental entity or officer or
8 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
9 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
10 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
11 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
12 152 F.3d 1193 (9th Cir. 1998).

13 *A. Failure to State a Claim*

14 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he
15 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
16 the violation was proximately caused by a person acting under color of state law. *See Crumpton*
17 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
18 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
19 (1994). To satisfy the second prong, a plaintiff must allege facts showing how individually
20 named defendants caused, or personally participated in causing, the harm alleged in the
21 complaint. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold v. IBM*, 637 F.2d 1350,
22 1355 (9th Cir. 1981). Sweeping conclusory allegations against an official are insufficient to state a
23 claim for relief. *Leer*, 844 F.2d at 633.

1 Here, Plaintiff alleges the Classification Team violated his Eighth Amendment rights
2 when it failed to protect him. Dkt. 5. The Eighth Amendment requires prison officials to take
3 reasonable measures to guarantee the safety of prisoners. *Farmer v. Brennan*, 511 U.S. 825, 834
4 (1994). Prison officials have a duty to protect prisoners from violence suffered at the hands of
5 other prisoners. *Id.* at 833. However, not every injury suffered by a prisoner at the hands of
6 another is a violation of a prisoner's constitutional rights. *Id.* at 834.

7 In cases alleging an Eighth Amendment violation based on a failure to prevent harm, the
8 plaintiff must first meet an objective component by showing "he is incarcerated under conditions
9 posing a substantial risk of serious harm." *Id.*; see *Clouthier v. County of Contra Costa*, 591 F.3d
10 1232, 1242 (9th Cir. 2010). The plaintiff must also meet a subjective component by showing the
11 prison official acted with deliberate indifference to inmate health or safety. *Farmer*, 511 U.S. at
12 834; *Helling v. McKinney*, 509 U.S. 25, 33 (1993) ("[A] claim that a prisoner's confinement
13 violate[s] the Eighth Amendment requires an inquiry into the prison officials' state of mind.").
14 "[A] prison official cannot be found liable under the Eighth Amendment . . . unless the official
15 knows of and disregards an excessive risk to inmate health or safety; the official must both be
16 aware of facts from which the inference could be drawn that a substantial risk of serious harm
17 exists, and he must also draw the inference." *Farmer*, 511 U.S. at 832; see *Wallis v. Baldwin*, 70
18 F.3d 1074, 1077 (9th Cir. 1995). A prison "official's failure to alleviate a significant risk he
19 should have perceived but did not," therefore, cannot "be condemned as the infliction of
20 punishment." *Farmer*, 511 U.S. at 838.

21 In the Complaint, Plaintiff states he was attacked and assaulted at WSP by Mexican and
22 White inmates. Dkt. 5, p. 3. Plaintiff alleges the Classification Team misclassified Plaintiff and
23 transferred him to CBCC. *Id.* Plaintiff's life was placed in danger when he was transferred to
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1 CBCC because he was housed individuals from the same groups that attacked him. *Id.* Plaintiff,
2 however, fails to allege facts showing the Classification Team was aware Plaintiff would be
3 placed in a dangerous situation if he was transferred to CBCC. Therefore, Plaintiff has not shown
4 the Classification Team knew of a serious risk of harm to Plaintiff and acted with deliberate
5 indifference to the risk of harm. Plaintiff's vague and conclusory allegations are insufficient to
6 show his constitutional rights were violated. *See Jones v. Community Development Agency*, 733
7 F.2d 646, 649 (9th Cir. 1984) (vague and mere conclusory allegations unsupported by facts are
8 not sufficient to state section 1983 claims). As such, Plaintiff has not stated a claim upon which
9 relief can be granted.

10 Plaintiff has also not named a proper defendant in this action. The Classification Team is
11 not a "person" for purposes of a § 1983 civil rights action. *See e.g. Herrera v. Pain Management*
12 *Committee at Corcoran State Prison*, 2012 WL 6005379, *2 (E.D. Cal. Nov. 30, 2012) (finding a
13 committee was not a proper defendant in a § 1983 action). If Plaintiff wishes to sue the members
14 of the Classification Team, he must identify each individual committee member as a defendant
15 and identify the actions taken by each committee member which resulted in a violation of his
16 constitutional rights.

17 **III. Instruction to Plaintiff and the Clerk**

18 If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an
19 amended complaint and within the amended complaint, he must write a short, plain statement
20 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the
21 person who violated the right; (3) exactly what the individual did or failed to do; (4) how the
22 action or inaction of the individual is connected to the violation of Plaintiff's constitutional
23 rights; and (5) what specific injury Plaintiff suffered because of the individual's conduct. *See*
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1 *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976). Each claim for relief must be simple,
2 concise, and direct.

3 Plaintiff shall present the amended complaint on the form provided by the Court. The
4 amended complaint must be legibly rewritten or retyped in its entirety, it should contain the same
5 case number, and it may not incorporate any part of the original complaint by reference. The
6 amended complaint will act as a complete substitute for any previously filed complaint, and not
7 as a supplement. The Court will screen the amended complaint to determine whether it contains
8 factual allegations linking each defendant to the alleged violations of Plaintiff's rights.

9 If Plaintiff fails to file an amended complaint or fails to adequately address the issues
10 raised herein on or before May 17, 2019, the undersigned will recommend dismissal of this
11 action pursuant to 28 U.S.C. § 1915.

12 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
13 civil rights complaint and for service.

14 Dated this 17th day of April, 2019.

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17 David W. Christel
18 United States Magistrate Judge
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